

SENATE BILL NO. 382

INTRODUCED BY SHOCKLEY

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE ADOPTION OF NONCOOPERATION ORDINANCES, RESOLUTIONS, POLICIES, OR PRACTICES BY LOCAL GOVERNMENTS ~~AND SCHOOL DISTRICTS~~ REGARDING COMMUNICATION OR COOPERATION WITH THE FEDERAL GOVERNMENT ON THE IMMIGRATION STATUS OF CERTAIN ALIENS; PROVIDING FOR ENFORCEMENT BY A PRIVATE RIGHT OF ACTION; AND AMENDING SECTIONS 2-9-111, 7-1-111, 7-1-4123, AND 7-5-131, ~~20-3-324, AND 20-15-403~~; MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-9-111, MCA, is amended to read:

"2-9-111. Immunity from suit for legislative acts and omissions. (1) As used in this section:

(a) the term "governmental entity" means only the state, counties, municipalities, school districts, and any other local government entity or local political subdivision vested with legislative power by statute;

(b) the term "legislative body" means only the legislature vested with legislative power by Article V of The Constitution of the State of Montana and that branch or portion of any other local governmental entity or local political subdivision empowered by law to consider and enact statutes, charters, ordinances, orders, rules, policies, resolutions, or resolves;

(c) (i) the term "legislative act" means:

(A) actions by a legislative body that result in creation of law or declaration of public policy;

(B) other actions of the legislature authorized by Article V of The Constitution of the State of Montana;

or

(C) actions by a school board that result in adoption of school board policies pursuant to 20-3-323(1);

(ii) the term legislative act does not include administrative actions undertaken in the execution of a law or public policy.

(2) ~~A~~ Except as provided in [section 3], a governmental entity is immune from suit for a legislative act or omission by its legislative body, or any member or staff of the legislative body, engaged in legislative acts.

(3) Any member or staff of a legislative body is immune from suit for damages arising from the lawful

1 discharge of an official duty associated with legislative acts of the legislative body.

2 (4) The acquisition of insurance coverage, including self-insurance or group self-insurance, by a
3 governmental entity does not waive the immunity provided by this section.

4 (5) The immunity provided for in this section does not extend to:

5 (a) any tort committed by the use of a motor vehicle, aircraft, or other means of transportation; or

6 (b) any act or omission that results in or contributes to personal injury or property damage caused by
7 contamination or other alteration of the physical, chemical, or biological properties of surface water or ground
8 water, for which a cause of action exists in statutory or common law or at equity. This subsection ~~(b)~~ (5)(b) does
9 not create a separate or new cause of action."
10

11 **Section 2.** Section 7-1-111, MCA, is amended to read:

12 **"7-1-111. Powers denied.** A local government unit with self-government powers is prohibited from
13 exercising the following:

14 (1) any power that applies to or affects any private or civil relationship, except as an incident to the
15 exercise of an independent self-government power;

16 (2) any power that applies to or affects the provisions of 7-33-4128 or Title 39 ~~(labor, collective~~
17 ~~bargaining for public employees, unemployment compensation, or workers' compensation)~~, except that subject
18 to those provisions, it may exercise any power of a public employer with regard to its employees;

19 (3) any power that applies to or affects the public school system, except that a local unit may impose an
20 assessment reasonably related to the cost of any service or special benefit provided by the unit and shall exercise
21 any power that it is required by law to exercise regarding the public school system;

22 (4) any power that prohibits the grant or denial of a certificate of public convenience and necessity;

23 (5) any power that establishes a rate or price otherwise determined by a state agency;

24 (6) any power that applies to or affects any determination of the department of environmental quality with
25 regard to any mining plan, permit, or contract;

26 (7) any power that applies to or affects any determination by the department of environmental quality
27 with regard to a certificate of compliance;

28 (8) any power that defines as an offense conduct made criminal by state statute, that defines an offense
29 as a felony, or that fixes the penalty or sentence for a misdemeanor in excess of a fine of \$500, 6 months'
30 imprisonment, or both, except as specifically authorized by statute;

(9) any power that applies to or affects the right to keep or bear arms, except that a local government has the power to regulate the carrying of concealed weapons;

(10) any power that applies to or affects a public employee's pension or retirement rights as established by state law, except that a local government may establish additional pension or retirement systems;

(11) any power that applies to or affects the standards of professional or occupational competence established pursuant to Title 37 (~~professions and occupations~~) as prerequisites to the carrying on of a profession or occupation;

(12) except as provided in 7-3-1105, 7-3-1222, or 7-31-4110, any power that applies to or affects Title 75, chapter 7, part 1 (~~streambeds~~), or Title 87 (~~fish and wildlife~~);

(13) any power that applies to or affects landlords, as defined in 70-24-103, when that power is intended to license landlords or to regulate their activities with regard to tenants beyond what is provided in Title 70, chapters 24 and 25. This subsection is not intended to restrict a local government's ability to require landlords to comply with ordinances or provisions that are applicable to all other businesses or residences within the local government's jurisdiction.

(14) subject to 7-32-4304, any power to enact ordinances prohibiting or penalizing vagrancy;

(15) any power to adopt an ordinance, resolution, policy, or practice in violation of [section 3]."

NEW SECTION. Section 3. Noncooperation practices concerning certain aliens prohibited -- private right of action -- definition. (1) A local government, whether acting through its legislative governing body or by an initiative, referendum, or any other process may not adopt an ordinance, resolution, policy, or practice or in any other way limit or prohibit the local government or an employee of the local government from communicating or cooperating with a federal official or agency of the United States with regard to the immigration status of an individual within this state.

(2) In addition to any other legal remedy available, an individual aggrieved by a violation of subsection (1) has a private right of action in a district court to enforce the provisions of this section through any of the remedies provided for in Title 27, chapter 7, 8, 19, or 26. An individual who substantially prevails in an action pursuant to this section must be awarded the individual's reasonable costs, expenses, and attorney fees.

(3) As used in this section "local government" means a city, county, consolidated local government, or town.

1 NEW SECTION. **Section 4. No authority to adopt noncooperation provisions.** A county exercising
2 general powers has no implied authority to adopt an ordinance, resolution, policy, or practice that, if the county
3 exercised self-government powers, would violate [section 3].

4
5 **Section 5.** Section 7-1-4123, MCA, is amended to read:

6 **"7-1-4123. Legislative powers.** (1) A municipality with general powers has the legislative power, subject
7 to the provisions of state law, to adopt, amend, and repeal ordinances and resolutions required to:

8 ~~(1)~~(a) preserve peace and order and secure freedom from dangerous or noxious activities;

9 ~~(2)~~(b) secure and promote the general public health and welfare;

10 ~~(3)~~(c) provide any service or perform any function authorized or required by state law;

11 ~~(4)~~(d) exercise any power granted by state law;

12 ~~(5)~~(e) subject to 15-10-420, levy any tax authorized by state law for public or governmental purposes
13 as described in 7-6-2527;

14 ~~(6)~~(f) appropriate public funds;

15 ~~(7)~~(g) impose a special assessment reasonably related to the cost of any special service or special
16 benefit provided by the municipality or impose a fee for the provision of a service;

17 ~~(8)~~(h) grant franchises; and

18 ~~(9)~~(i) provide for its own organization and the management of its affairs.

19 (2) A municipality exercising general powers has no implied authority to adopt an ordinance, resolution,
20 policy, or practice that, if the municipality exercised self-government powers, would violate [section 3]."

21
22 **Section 6.** Section 7-5-131, MCA, is amended to read:

23 **"7-5-131. Right of initiative and referendum.** (1) The powers of initiative and referendum are reserved
24 to the electors of each local government. Resolutions and ordinances within the legislative jurisdiction and power
25 of the governing body of the local government, except those set out in subsection (2), may be proposed or
26 amended and prior resolutions and ordinances may be repealed in the manner provided in 7-5-132 through
27 7-5-137.

28 (2) The powers of initiative ~~shall~~ do not extend to the following:

29 (a) the annual budget;

30 (b) bond proceedings, except for ordinances authorizing bonds;

(c) the establishment and collection of charges pledged for the payment of principal and interest on bonds; ~~or~~

(d) the levy of special assessments pledged for the payment of principal and interest on bonds; or

(e) the adoption of a resolution or ordinance in violation of [section 3]."

~~NEW SECTION. Section 7. Trustees not to adopt noncooperation provisions concerning certain aliens. (1) The trustees of a school district may not adopt an ordinance, resolution, policy, or practice or in any other way limit or prohibit the district or an employee of the district from communicating or cooperating with a federal official or agency of the United States with regard to the immigration status of an individual within this state.~~

~~(2) In addition to any other legal remedy available, an individual aggrieved by a violation of subsection (1) has a private right of action in a district court to enforce the provisions of this section through any of the remedies provided for in Title 27, chapter 7, 8, 19, or 26. An individual who substantially prevails in an action pursuant to this section must be awarded the individual's reasonable costs, expenses, and attorney fees.~~

~~Section 8. Section 20-3-324, MCA, is amended to read:~~

~~"20-3-324. Powers and duties. As prescribed elsewhere in this title, the trustees of each district shall:~~

~~(1) employ or dismiss a teacher, principal, or other assistant upon the recommendation of the district superintendent, the county high school principal, or other principal as the board considers necessary, accepting or rejecting any recommendation as the trustees in their sole discretion determine, in accordance with the provisions of Title 20, chapter 4;~~

~~(2) employ and dismiss administrative personnel, clerks, secretaries, teacher's aides, custodians, maintenance personnel, school bus drivers, food service personnel, nurses, and any other personnel considered necessary to carry out the various services of the district;~~

~~(3) administer the attendance and tuition provisions and govern the pupils of the district in accordance with the provisions of the pupils chapter of this title;~~

~~(4) call, conduct, and certify the elections of the district in accordance with the provisions of the school elections chapter of this title;~~

~~(5) participate in the teachers' retirement system of the state of Montana in accordance with the provisions of the teachers' retirement system chapter of Title 19;~~

1 ~~——— (6) participate in district boundary change actions in accordance with the provisions of the school districts~~
2 ~~chapter of this title;~~

3 ~~——— (7) organize, open, close, or acquire isolation status for the schools of the district in accordance with the~~
4 ~~provisions of the school organization part of this title;~~

5 ~~——— (8) adopt and administer the annual budget or a budget amendment of the district in accordance with~~
6 ~~the provisions of the school budget system part of this title;~~

7 ~~——— (9) conduct the fiscal business of the district in accordance with the provisions of the school financial~~
8 ~~administration part of this title;~~

9 ~~——— (10) establish the ANB, BASE budget levy, over-BASE budget levy, additional levy, operating reserve,~~
10 ~~and state impact aid amounts for the general fund of the district in accordance with the provisions of the general~~
11 ~~fund part of this title;~~

12 ~~——— (11) establish, maintain, budget, and finance the transportation program of the district in accordance with~~
13 ~~the provisions of the transportation parts of this title;~~

14 ~~——— (12) issue, refund, sell, budget, and redeem the bonds of the district in accordance with the provisions~~
15 ~~of the bonds parts of this title;~~

16 ~~——— (13) when applicable, establish, financially administer, and budget for the tuition fund, retirement fund,~~
17 ~~building reserve fund, adult education fund, nonoperating fund, school food services fund, miscellaneous~~
18 ~~programs fund, building fund, lease or rental agreement fund, traffic education fund, impact aid fund, interlocal~~
19 ~~cooperative fund, and other funds as authorized by the state superintendent of public instruction in accordance~~
20 ~~with the provisions of the other school funds parts of this title;~~

21 ~~——— (14) when applicable, administer any interlocal cooperative agreement, gifts, legacies, or devises in~~
22 ~~accordance with the provisions of the miscellaneous financial parts of this title;~~

23 ~~——— (15) hold in trust, acquire, and dispose of the real and personal property of the district in accordance with~~
24 ~~the provisions of the school sites and facilities part of this title;~~

25 ~~——— (16) operate the schools of the district in accordance with the provisions of the school calendar part of~~
26 ~~this title;~~

27 ~~——— (17) set the length of the school term, school day, and school week in accordance with 20-1-302;~~

28 ~~——— (18) establish and maintain the instructional services of the schools of the district in accordance with the~~
29 ~~provisions of the instructional services, textbooks, K-12 career and vocational/technical education, and special~~
30 ~~education parts of this title;~~

1 ~~——— (19) establish and maintain the school food services of the district in accordance with the provisions of~~
2 ~~the school food services parts of this title;~~
3 ~~——— (20) make reports from time to time as the county superintendent, superintendent of public instruction,~~
4 ~~and board of public education may require;~~
5 ~~——— (21) retain, when considered advisable, a physician or registered nurse to inspect the sanitary conditions~~
6 ~~of the school or the general health conditions of each pupil and, upon request, make available to any parent or~~
7 ~~guardian any medical reports or health records maintained by the district pertaining to the child;~~
8 ~~——— (22) for each member of the trustees, visit each school of the district not less than once each school fiscal~~
9 ~~year to examine its management, conditions, and needs, except that trustees from a first-class school district may~~
10 ~~share the responsibility for visiting each school in the district;~~
11 ~~——— (23) procure and display outside daily in suitable weather on school days at each school of the district~~
12 ~~an American flag that measures not less than 4 feet by 6 feet;~~
13 ~~——— (24) provide that an American flag that measures approximately 12 inches by 18 inches be prominently~~
14 ~~displayed in each classroom in each school of the district, except in a classroom in which the flag may get soiled.~~
15 ~~This requirement is waived if the flags are not provided by a local civic group.~~
16 ~~——— (25) adopt and administer a district policy on assessment for placement of any child who enrolls in a~~
17 ~~school of the district from a nonpublic school that is not accredited, as required in 20-5-110;~~
18 ~~——— (26) upon request and in compliance with confidentiality requirements of state and federal law, disclose~~
19 ~~to interested parties school district student assessment data for any test required by the board of public~~
20 ~~education;~~
21 ~~——— (27) consider and may enter into an interlocal agreement with a postsecondary institution, as defined in~~
22 ~~20-9-706, that authorizes 11th and 12th grade students to obtain credits through classes available only at a~~
23 ~~postsecondary institution;~~
24 ~~——— (28) approve or disapprove the conduct of school on a Saturday in accordance with the provisions of~~
25 ~~20-1-303;~~
26 ~~——— (29) consider and, if advisable for a high school or K-12 district, establish a student financial institution,~~
27 ~~as defined in 32-1-115; and~~
28 ~~——— (30) adopt and administer the policies and practices of the district regarding aliens in accordance with~~
29 ~~section 7; and~~
30 ~~——— (30)(31) perform any other duty and enforce any other requirements for the government of the schools~~

prescribed by this title, the policies of the board of public education, or the rules of the superintendent of public instruction."

~~Section 9. Section 20-15-403, MCA, is amended to read:~~

~~"20-15-403. Applications of other school district provisions. (1) When Except as provided in subsection (3), when the term "school district" appears in the following sections outside of Title 20, the term includes community college districts and the provisions of those sections applicable to school districts apply to community college districts: 2-9-101, 2-9-111, 2-9-316, 2-16-114, 2-16-602, 2-16-614, 2-18-703, 7-3-1101, 7-6-2604, 7-6-2801, 7-7-123, 7-8-2214, 7-8-2216, 7-11-103, 7-12-4106, 7-13-110, 7-13-210, 7-15-4206, 10-1-703, 15-1-101, 15-6-204, 15-16-101, 15-16-605, 15-70-301, 17-5-101, 17-5-202, 17-6-103, 17-6-204, 17-6-213, 17-7-201, 18-1-201, 18-2-101, 18-2-103, 18-2-113, 18-2-114, 18-2-401, 18-2-404, 18-2-432, 18-5-205, 19-1-102, 19-1-811, 22-1-309, 25-1-402, 27-18-406, 33-20-1104, 39-3-104, 39-4-107, 39-31-103, 39-31-304, 39-71-116, 39-71-117, 39-71-2106, 40-6-237, 49-3-101, 49-3-102, 52-2-617, 53-20-304, 82-10-201 through 82-10-203, 85-7-2158, and 90-6-208 and Rules 4D(2)(g) and 15(c), M.R.Civ.P., as amended.~~

~~(2) When the term "school district" appears in a section outside of Title 20 but the section is not listed in subsection (1), the school district provision does not apply to a community college district.~~

~~(3) As used in 2-9-111(1)(a), for the purposes of [section 7], the term "school district" does not include a community college district."~~

NEW SECTION. Section 7. Codification instruction. (1) [Section 3] is intended to be codified as an integral part of Title 7, chapter 1, part 1, and the provisions of Title 7, chapter 1, part 1, apply to [section 3].

(2) [Section 4] is intended to be codified as an integral part of Title 7, chapter 1, part 21, and the provisions of Title 7, chapter 1, part 21, apply to [section 4].

~~(3) [Section 7] is intended to be codified as an integral part of Title 20, chapter 3, part 3, and the provisions of Title 20, chapter 3, part 3, apply to [section 7].~~

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